IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10556 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHIVAM SCRAP RECYCLING PVT. LTD.

Versus

UNION OF INDIA

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Appearance:

1. Special Civil Application No. 10556 of 2002
MR PR NANAVATI for Petitioner No. 1
MR DN PATEL for Respondent No. 1
..... for Respondent No. 2

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 17/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by Shri D.N. Patel, learned Sr. Central Government Standing Counsel, for the respondent authorities. At the request of the learned advocates, the petition is finally heard today.

2. Short facts which are required to be recorded for the purpose of disposal of this petition are as under.

3. The petitioner had filed an appeal before the CEGAT. By an order dated 4.10.2001, the CEGAT had directed the petitioner to deposit Rs. 4.97 lakhs by way of pre-deposit. The petitioner did not deposit the amount as directed by CEGAT and, therefore, by an order dated 19.10.2002, the appeal was dismissed by the CEGAT. The petitioner has been aggrieved by the order dated 19/10/2001, whereby the appeal has been dismissed.

4. Learned advocate Shri P.R. Nanavati appearing for the petitioner has submitted that during the pendency of this petition, a sum of Rs. 4,47,094/- was deposited with State Bank of India on 16.12.2002 towards the amount of pre-deposit. It has been submitted by the learned advocate that the entire amount of the pre-deposit could not be deposited because of financial difficulties being faced by the petitioner. However, he has assured this court that the balance amount shall be deposited on or before 31.12.2002.

5. It has been submitted by the learned advocate appearing for the petitioner that if the amount of pre-deposit was not deposited, the Tribunal could not have dismissed the appeal without considering the same on merits.

6. On the other hand, learned Sr. Standing Counsel Shri D.N. Patel has submitted that once the petitioner was directed to deposit the amount by way of pre-deposit, it was obligatory on the part of the petitoner to deposit the amount of Rs. 4.97 lakhs as directed by the CEGAT. As the said amount had not been deposited, the CEGAT had rightly dismissed the appeal.

7. We have heard the learned advocates. It is not in dispute that the petitioner did not deposit any amount within the period prescribed in pursuance of the direction given by the CEGAT and, therefore, the appeal filed by the petitioner had been dismissed. During the

pendency of the petition, the petitioner has deposited a sum of Rs. 4.47 lakhs so that CEGAT can be directed to restore the appeal to file and hear the same on merits. As stated hereinabove, learned advocate Shri Nanavati appearing for the petitioner has assured this court that the balance amount of pre-deposit shall be deposited on or before 31.12.2002.

8. Looking to the fact that the petitioner has already deposited Rs. 4.47 lacs during the pendency of this petition and as learned advocate Shri Nanavati has assured this court on behalf of the petitioner that the balance amount would be deposited on or before 31.12.2002, in our opinion, in the interest of justice, the CEGAT should give a chance to the petitioner so that the petitioner can proceed further with his appeal on merits. Looking to the peculiar facts of the case, we direct that if the balance amount of pre-deposit is deposited on or before 31.12.2002, the CEGAT would restore the appeal to file and decide the same on merits.

The petition is thus disposed of as allowed subject to the above observations. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)

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